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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,500	10/24/2003	Peter W. Carhuft	88265-7670	1144
28765 7590 12/23/2008 WINSTON & STRAWN LLP PATENT DEPARTMENT 1700 K STREET, N.W. WASHINGTON, DC 20006				
EXAMINER MARKOFF, ALEXANDER				
ART UNIT		PAPER NUMBER		
1792				
MAIL DATE		DELIVERY MODE		
12/23/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/692,500

Applicant(s)

CARHUFF ET AL.

Examiner

Alexander Markoff

Art Unit

1792

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23, 29-31, 34-37, 42, 47, 48, 50-58, 60-62 and 67 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23, 29-31, 34-37, 42, 47, 48, 50-58, 60-62 and 67 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/11/08 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 23, 29-31, 34-37, 42, 47, 48, 50-58, 60-62 and 67 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The applicants amended the independent claims to recite conducting the cleaning operation "without having to connect the cleansing fluid supply to the dispensing line each time cleaning is needed".

The original disclosure fails to support such limitation.

a. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 23, 29-31, 34-37, 42, 47, 48, 50-58, 60-62 and 67 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to the all claims:

It is not clear from the independent claims what is required by the step of "preparing the food product dispenser".

What for the dispenser should be prepared? What manipulative steps are required?

The claims are also indefinite because it is not clear from the independent claims whether "the food or food component dispensing path" is the same as "the dispensing path". The applicants use both these term in the claims.

The claims are further indefinite because the term "the dispensing line" in the independent claims lacks proper antecedent basis.

Claim 35 and the dependent claims are indefinite because it is not clear what is required by "operably associated" and "in cleaning association".

Claim Rejections - 35 USC § 103

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 23, 29-31, 34-37, 42, 47, 48, 50-58, 60-62 and 67 are rejected under 35 U.S.C. under 35 U.S.C. 103(a) as obvious over Mirabile (US Patent No 5,762,096,

which incorporates US Patent No 4,527,585) in view of Barinas (US Patent No 5,329,950).

Mirabile teaches a method comprising the claimed manipulative steps except for recirculating the cleaning fluid. See entire document and incorporated patent, especially column 1 and column 4, line 20 – column 7, line 41.

Mirabile does not specifically states that cleaning is conducted several times per day. However, since Mirabile teaches conducting cleaning in off-hours and any desired or needed time it is believed that that the cleaning is conducted more than ones per day in the conventional operations.

On the other hand, it would have been obvious to an ordinary artisan at the time the invention was made to conduct the cleaning at any time when required by operation conditions recited by Mirabile, such as for example unacceptable foaming due to freezing or contamination.

Barinas teaches that it was known to recirculate cleaning fluids through food dispensers during the cleaning utilizing apparatuses connected to the dispenser flow path.

It would have been obvious to an ordinary artisan at the time the invention was made to recirculate cleaning fluids in the method and apparatus of Mirabile as suggested by Barinas in order to reduce the use of chemicals and to achieve the benefits disclosed by Barinas.

As to the dispenser bowl: Mirabile teaches cleaning and sanitizing of the beverage dispensers. Mirabile does not exclude any food or any dispensers.

It would have been obvious to an ordinary artisan at the time the invention was made to apply the method of Mirabile for cleaning and sanitizing any food beverage dispenser (including the ones with a bowl) in order to keep it clean and sanitized.

As to claims 37, 57, 58, 60 and 61:

Mirabile modified by the teaching of Barinas teaches the claimed method except for specific recitation of velocity of cleaning fluid, temperature of water, duration of cleaning and cleaning of the milk-based food or component.

As to the temperature of water: the cited documents teach the use of hot water. The scope of the term "hot water" comprises the water of the claimed temperature. It would have been obvious to an ordinary artisan at the time the invention was made to find an optimum temperature of the hot water by routine experimentation in order to ensure the cleaning and sanitizing of the dispensers.

As to the fluid velocity and duration of cleaning:

These parameters are result effective variables. It would have been obvious to find optimum values of the result effective variables by routine experimentation in order to enhance cleaning and ensure desired level of cleaning.

As to the specific food or food component: Mirabile teaches cleaning and sanitizing of the beverage dispensers. Mirabile does not exclude any food or any dispensers.

It would have been obvious to an ordinary artisan at the time the invention was made to apply the method of Mirabile for cleaning and sanitizing any food beverage dispenser in order to keep it clean and sanitized.

Response to Arguments

10. Applicant's arguments filed 11/11/08 have been fully considered but they are not persuasive.

The applicants amended the claims and argue that the previously applied rejection is not proper for the amended claims.

The applicants allege that the applied prior art does not teach or suggest a cleaning fluid supply in the dispenser. This is not persuasive.

First, the claims do not specify any construction of the supply or recite the use of a tank or vessel as the supply. Thereby, any part of the dispenser of Mirabile, which is filled with the cleaning liquid, can be readable on the claimed supply.

Second, in contrast to the applicants' allegation Mirabile teaches integrated cleaning device as conventional. See at least column 1 and the incorporated disclosure of US Patent No 4,527,585.

The applicants argue that the applied prior art does not teach or suggest recirculation of the cleaning fluid.

This is not persuasive because Barinas clearly suggests recirculation.

With respect to the teaching of Barinas the applicants argue that the document is directed to portable equipment.

This is not persuasive.

First, the claims do not exclude the use any portable equipment. The argued limitation of the cleaning fluid supply located in the dispenser was addressed above and is repeated here.

Second, the teaching of Barinas was used to show that it was known to recirculate cleaning fluids through food dispensers during the cleaning utilizing apparatuses connected to the dispenser flow path.

Further, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The applicants argue that claim 50 further provides a mechanism for recirculating the cleansing fluid through the same path that was just cleaned. The applicants allege that such is not disclosed by Mirabile.

This is not persuasive.

First, the claims are directed to a method, not an apparatus.

Second, the referenced claim does not contain the argued limitation.

Third, the teaching of Barinas was used to show that the recirculation of the cleaning fluids was known in the art.

The applicants argue that the applied art does not teach a heating device and the heating of the cleaning fluid, as recited by claims 51 and 67.

This is not persuasive:

First, claim 51 merely recite the step of providing a heater. It has been held that to be entitled to weight in method claims, the recited structure limitations therein must affect the method in a manipulative sense, and not to amount to the mere claiming of a use of a particular structure. *Ex parte Pfeiffer*, 1962 C.D. 408 (1961).

Second, *Mirabile* teaches a heater (see at least column 4, lines 29-32).

It is noted that the applicants cited a number of Board of Appeals Decisions. However, all the cited Decisions and the Opinions in support of the Decisions were *not* written for publication and are *not* binding precedents of the Board. Thereby the examiner would not provide analysis of the applicability of the referenced Decisions to the instant case.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Markoff whose telephone number is 571-272-1304. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on 571-272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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